

## **SUBCHAPTER E : APPEALS OF RULES OF THE EDWARDS UNDERGROUND WATER DISTRICT**

### **§86.91. General.**

This subchapter applies to appeals to the commission of rules promulgated by the Edwards Underground Water District under Texas Civil Statutes, Article 8280-219, Water Auxiliary Laws (1988 Pamphlet), as amended by House Bill 1942, 70th Legislature, 1987. For the purposes of this subchapter, the term "rule" shall mean an established standard, guide, or regulation prescribing or directing action, forbearance, or responsibility.

Adopted May 8, 1996  
Derived from §275.91

Effective June 6, 1996

### **§86.92. Petition by an Affected Person.**

Any person affected by a rule promulgated by the Edwards Underground Water District may appeal such rule by filing a petition for appeal with the commission.

Adopted May 8, 1996  
Derived from §275.92

Effective June 6, 1996

### **§86.93. Issues on Appeal.**

A rule may be determined unreasonable or otherwise invalid by the commission if the rule:

- (1) exceeds the authority conferred by applicable state law;
- (2) irreconcilably conflicts with state or federal law;
- (3) extends or modifies applicable state law;
- (4) has no reasonable relationship to statutory purposes and authorizations;
- (5) was promulgated upon unlawful procedures which prejudiced substantial rights of the appellant;
- (6) requires the doing of an act so vague that persons of common intelligence must guess at its meaning and differ as to its application;
- (7) causes an unreasonably disproportionate hardship or is discriminatory in a manner not in accordance with established priorities for water use and the alleged hardship or discrimination

cannot be addressed under the rules of the Edwards Underground Water District providing for variances for the district's rules; or

(8) is otherwise unreasonable or violates such principles provided by the courts of this state relating to the invalidity of a rule.

Adopted May 8, 1996  
Derived from §275.93

Effective June 6, 1996

**§86.94. Burden of Proof.**

It is the burden of the petitioner to demonstrate that the rule is unreasonable or otherwise invalid.

Adopted May 8, 1996  
Derived from §275.94

Effective June 6, 1996

**§86.95. Rule Remains Effective Pending Appeal Unless Stayed or Reformed.**

(a) During the pendency of an appeal of a rule to the commission, the rule shall remain in effect for all purposes until final disposition of the appeal by the commission, unless, after consideration of a proper request as provided in this section, enforcement of the rule is stayed by the commission, in whole or in part, or the rule is reformed by the commission pending appeal. A request for commission stay of the enforcement and/or reformation of a rule pending appeal must contain the grounds for such request and the relief sought and be filed with the chief clerk of the commission.

(b) A copy of the request must be served by the person filing the request by certified mail or personal delivery on the Edwards Underground Water District on or before the date the request is filed with the chief clerk. Commission determination on such request may not be made earlier than ten days from filing of the request with the chief clerk. Commission determination on the request shall be made on an expedited basis.

(c) Any person may file a written request with the chief clerk of the commission to be mailed notice by the chief clerk within five days of receipt of a petition by the commission of any appeal of a rule to the commission taken pursuant to §86.92 of this title (relating to Petition by an Affected Person), or to be so notified of any request made pursuant to §86.95 of this title (relating to Rule Remains Effective Pending Appeal Unless Stayed or Reformed) for a stay of the enforcement or for reformation of a rule pending commission action on the appeal. The chief clerk shall maintain a current list of persons requesting to be notified and shall furnish a copy of the list to any person requesting it. Failure to provide the notice does not invalidate any action by the commission. At the end of each state fiscal year, the chief clerk shall notify persons who have requested to be notified as provided in this section to confirm their desire to continue to be notified. The names of any persons who fail to so confirm within 30 days of such notification shall be removed from the list. The chief clerk shall, on an annual basis, assess fees for notices under this section in accordance with Texas Water Code, §5.174.

Adopted May 8, 1996  
Derived from §275.95

Effective June 6, 1996

**§86.96. Prerequisites to Appeal.**

The following are prerequisites to appeal under this subchapter.

(1) Filing a petition. An appeal under this subchapter requires the filing of a petition for review with the chief clerk of the commission as provided under §86.97 of this title (relating to Contents of Petition for Appeal).

(2) Service of pleadings. A copy of the petition and all other pleadings shall be served by the petitioner by certified mail or personal delivery on the Edwards Underground Water District, the executive director of the commission, and the public interest counsel of the commission. A certificate of service shall be furnished to the chief clerk with the original pleading.

(3) Filing fee. Each petition shall be accompanied by a filing fee of \$100, unless the petition is submitted by a state agency or other entity exempt from such fee requirements.

(4) Hearing. A time and place for hearing on the matter in dispute shall be set and notice of the hearing shall be issued by the chief clerk as required by law. The petitioner is responsible for the cost of required notice.

Adopted May 8, 1996  
Derived from §275.96

Effective June 6, 1996

**§86.97. Contents of Petition for Appeal.**

The following information shall be contained in the petition for appeal under this subchapter:

(1) the name of the petitioner, with the original copy of the pleading signed by the petitioner or his authorized representative;

(2) the telephone number and address of the petitioner and his authorized representative;

(3) a clear and concise statement of the legal grounds for such appeal including how the petitioner is an "affected" person as provided by §86.92 of this title (relating to Petition by an Affected Person);

(4) a certified copy of the applicable rule; and

(5) a prayer stating the type of relief, action, or order desired by the petitioners (e.g., repeal of the rule or specified modification to the rule);

(6) a certificate of service; and

(7) any other matter required by law.

Adopted May 8, 1996  
Derived from §275.97

Effective June 6, 1996

**§86.98. Answer.**

Not later than the 20th day after the date on which the Edwards Underground Water District receives a copy of the petition, the district may submit to the chief clerk an answer in defense of the rule from which the appeal is taken.

Adopted May 8, 1996  
Derived from §275.98

Effective June 6, 1996

**§86.99. Review by Commission.**

If the commission determines a rule is unreasonable or invalid, it shall, at its discretion, either declare that the rule is null and void and direct the board of directors of the district to adopt a substitute rule or reform the rule so that it is reasonable and valid. The commission on its own motion, or at the request of any party to an appeal, may refer the appeal to SOAH for hearing.

Adopted May 8, 1996  
Derived from §275.99

Effective June 6, 1996

**§86.100. Consolidation.**

The commission may consolidate any or all of the appeals, if any, which relate to the same rule being appealed.

Adopted May 8, 1996  
Derived from §275.100

Effective June 6, 1996

**§86.101. Finality of Commission Order.**

The commission's order shall be the final decision in the appeal required by Texas Water Code Auxiliary Laws, Article 8280-219, §3(c), as amended by House Bill 1942 (1987).

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Derived from §275.101

Effective June 6, 1996

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**Derivation Table**  
**Chapter 86 - Special Provisions for Contested Case Hearings**  
**Subchapter E : Appeals of Rules of the Edwards Underground Water District**

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

| <b>New Section</b> | <b>Old Section</b> |
|--------------------|--------------------|
| 86.91              | 275.91             |
| 86.92              | 275.92             |
| 86.93              | 275.93             |
| 86.94              | 275.94             |
| 86.95              | 275.95             |
| 86.96              | 275.96             |
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